



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

April 4, 2016

The Honorable John Thune
Chairman
Committee on Commerce, Science, and Transportation
United States Senate
254 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Thune:

Thank you for your letter regarding disclosure of non-public information outside the Commission and the formation of the NG911 NOW Coalition. I appreciate the opportunity to explain the Commission's rules regarding non-public information and to answer your particular questions.

Under the Commission's rules, FCC employees may not release nonpublic information without proper authorization. That authorization, however, does not always have to be in writing or from the Chairman personally. The rule referenced in your letter and by Commissioner O'Rielly (47 CFR 19.735-203) states that nonpublic information may not be disclosed "[e]xcept as authorized in writing by the Chairman pursuant to paragraph (b) of this section, or otherwise as authorized by the Commission or its rules." Written authorization from the Chairman is required *only* for paragraph (b) situations, which are those in which an employee is "engaged in outside [non-Commission] teaching, lecturing, or writing" and wishes to use nonpublic information for that purpose.

Disclosures in all other contexts may be made if "authorized by the Commission or its rules." There is no requirement that such authorizations be in writing. Consistent with the rules, it has been the agency's practice for many years to rely on authorizations from the Chairman (or his staff, acting on his behalf) when disclosure would be in the interest of the agency. For instance, the Chairman or his staff might authorize sharing information with other federal agencies that have overlapping or related jurisdiction. Authorization in such a case may be in writing, but the rules do not require that.

In answering your specific questions:

- *Question 1:* Commission practice for several decades has been to brief reporters on the substance of complex and important Commission activities on the record, as well as on background. Much of what the Commission does can be highly technical in nature, so the media relations staff must be able to explain complicated issues in an understandable way. When necessary, FCC media relations staff will make subject matter experts available to explain complex Commission policies to reporters.

Periodically, the Office of Media Relations (OMR) hosts press conference calls for members of the news media. The purpose of these calls is to provide information on FCC policies with significant public interest or on issues that may be complicated or highly technical. Written authorization to conduct press calls is not required as a matter of either Commission rule or Commission practice.

The Office of the Chairman works with the OMR as it does with all offices and bureaus in the Commission. Many of my proposals have garnered intense media and stakeholder interest. OMR should be prepared to answer incoming questions from the press about Commission proposals – whether they are on circulation or have been adopted – to the best of their ability and in a timely manner.

Since October 29, 2013, OMR has held at least twenty-two (22) press conference calls with members of the news media and senior FCC officials on number of proposals and actions. Attached is a list of the press calls conducted. Only credentialed news media are permitted on media conference calls as well as relevant staff. OMR staff strictly enforces this rule and has endeavored to remove non-credentialed media from calls when such entities have attempted to participate.

Once information is authorized for release, it is no longer considered non-public information. As I explained above, written authorization to conduct press calls is not required as a matter of either Commission rule or Commission practice.

- *Question 2:* As explained above, the Chairman must provide written authorization to release non-public information only if that information is to be used for outside writing, teaching, or speaking purposes. I have not provided such a written authorization to release non-public information since October 29, 2013.
- *Question 3:* As explained above, the Chairman must provide written authorization to release non-public information only if that information is to be used for outside writing, teaching, or speaking purposes. I have not received any such requests since October 29, 2013.
- *Question 4:* One of the core purposes of the FCC, embedded in the very first section of the Communications Act of 1934, is “promoting safety of life and property through the use of wire and radio communication.” Fulfilling this statutory duty to protect public safety has been one of my top priorities as Chairman of the FCC. As the FCC official designated to represent the Commission “in all matters relating to legislation,” I have not hesitated to express my views about public safety issues before Congressional committees, in public speeches, or in other forums. For example, in my testimony before your Committee last month, I reiterated my concerns that many communities do not have the resources to upgrade their 911 emergency response systems and urged you to help provide them these resources.

My public advocacy for updating our dangerously out-of-date 911 response system does not violate either the letter or the spirit of the Anti-Lobbying Act or the “general rider” appropriations language you cite in the letter. To the contrary, I believe the agency’s statutory obligations in the area of public safety compel me to speak out about how our public safety answering points (PSAPs) are failing to upgrade their technologies, leaving our emergency responders less prepared to deal with emergencies. In my remaining months as FCC Chairman, I will continue to publicly advocate for the resources and planning necessary to speed up the Next Generation 911 (NG911) transition.

The NG911 NOW Coalition shares this same policy goal, but is the creation of its member organizations and operates entirely independently of the Commission. Neither I nor other FCC staff played any role in creating this group. A few FCC staff members became generally aware in late 2015 that public safety and industry groups were discussing the formation of this group. FCC staff learned of these discussions while attending a series of meetings convened by the National 911 Office (which is housed within the National Highway Traffic Safety Administration at the Department of Transportation) that brought together experts from public safety, industry, and academia to discuss issues associated with NG911. At these meetings, FCC staff limited their participation to matters of public record and did not share non-public information.

During the course of the meetings, some of the organizations began to discuss the formation of a coalition to raise public awareness of NG911 and advocate for completing the NG911 transition by the end of 2020. FCC staff in attendance did not contribute to these discussions and made clear that the Commission, as a regulatory agency, could not participate in the development or be a member of the coalition. FCC staff also did not participate in any planning of outreach or advocacy by the coalition, and has had no involvement with the coalition’s outreach or advocacy since it was created.

I appreciate you reaching out to me regarding this issue. Please let me know if I can be of further assistance.

Sincerely,



Tom Wheeler

APPENDIX

Press Calls or Briefings: October 29, 2013 – April 4, 2016

(Unless noted otherwise, these calls were conducted on background)

2014

February 19 – Open Internet framework

March 6 – JSA Notice of Proposed Rulemaking

April 24 – Open Internet Notice of Proposed Rulemaking

June 18 – Measuring Broadband America Report release

June 20 – E-Rate Notice of Proposed Rulemaking

September 25 – Inmate Calling Service Notice of Proposed Rulemaking

December 11 – E-rate press call with Senator Markey and Chairman Wheeler *(Note: This call was on the record)*

2015

February 2 – Municipal Broadband Petitions

February 4 – Open Internet Order

February 6 – Incentive Auction

March 4 – LNPA trade publication briefing

March 12 – Open Internet Order (day item was released)

March 27 – 3.5 Citizens Broadband Radio Service

April 8 – AT&T Consumer Privacy Investigations settlement

May 27 – Telephone Consumer Protection Act declaratory ruling

May 29 – Lifeline Second Further Notice of Proposed Rulemaking, Second Report and Order

June 17 – AT&T \$100 Million Notice of Apparent Liability

June 25 – Incentive Auction competitive bidding rules

June 25 – Incentive Auction Procedure Rules pen and pad for trade publications

July 10 – Technology Transitions Report and Orders and FNPRM

October 16 – Incentive Auction opening bid prices

2016

January 31 – Set-Top Box Notice of Proposed Rulemaking proposal

March 8 – Lifeline Order proposal

March 10 – Privacy Notice of Proposed Rulemaking proposal